



**Order under Section 69
Residential Tenancies Act, 2006**

Citation: Jaworski v Reid, 2023 ONLTB 18435

Date: 2023-02-08

File Number: LTB-L-016415-22

In the matter of: 6 Fourth Ave
Cambridge ON N1S2C8

Between: Darius Jaworski Landlord

And

Cindy Reid Tenant

Darius Jaworski (the 'Landlord') applied for an order to terminate the tenancy and evict Cindy Reid (the 'Tenant') because:

- the Landlord in good faith requires possession of the rental unit for the purpose of residential occupation for at least one year.

The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was heard by videoconference on October 20, 2022.

The Landlord and the Tenant attended the hearing.

Determinations:

1. On February 19, 2022, the Landlord gave the Tenant an N12 notice of termination with the termination date of April 30, 2022. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by the Landlord's son.
2. Pursuant to section 48 of the Residential Tenancies Act, 2006 (the 'Act'):
 - (1) A landlord may, by notice, terminate a tenancy if the landlord in good faith requires possession of the rental unit for the purpose of residential occupation by,
 - (c) a child or parent of the landlord or the landlord's spouse; or...

(2) The date for termination specified in the notice shall be at least 60 days after the notice is given and shall be the day a period of the tenancy ends or, where the tenancy is for a fixed term, the end of the term.

3. The N12 notice gives the Tenant over 60 days' notice. Rent is due on the 1st day of each month and so the termination date in the notice is the last day of a rental period.
4. Pursuant to section 48.1 of the Act a landlord who has served an N12 notice is required to give the tenant compensation in the amount of one month of rent. Section 55.1 of the Act requires a landlord who is obligated to give compensation to a tenant under s.48.1 to pay that compensation no later than the termination date in the N12 notice.
5. There is no dispute the Landlord paid the Tenant compensation before the termination date in the N12 notice of April 30, 2022.
6. The main issue to be determined on this application is whether the Landlord has satisfied the "good faith" requirement in s.48(1) of the Act.
7. The Tenant was required to pay the Landlord \$5,496.79 in daily compensation for use and occupation of the rental unit for the period from May 1, 2022 to October 20, 2022.
8. Based on the Monthly rent, the daily compensation is \$31.77. This amount is calculated as follows: $\$966.44 \times 12$, divided by 365 days.
9. The position of the Landlord is that he requires the rental unit for his son. The Landlord's son currently lives with the Landlord in a finished basement. There is no separate entrance to the basement unit, so the son accesses the basement unit through the main entrance of the house. The Landlord's son's girlfriend also lives in the basement unit. The son requires the unit for his own use to acquire more privacy to live so he and his girlfriend do not have share a house with Landlord.
10. The position of the Tenant is that the Landlord is giving her an N12 in reaction due to the Landlord losing a case where the Tenant was awarded damages. The Tenant did not provide any evidence to the Board to support her claim and testified she thought it was "odd" that the Landlord filed the N12 after she won the previous case. The Tenant claims she pays her rent on time and is not in arrears and feels there is no other reason for the Landlord to evict her.
11. The Tenant submitted she would require 6 months to find a new place to live. The Tenant's daughter lives with the Tenant and contributes to her rent. The Tenant receives 450.00 per month in disability and works part time making less than \$20.00 per hour. The Tenant submitted that her current rent is affordable however if she is forced to vacate and find a new rental unit the market pricing is such that she would be challenged with finding a place that she can afford.

12. The Tenant gave no evidence that would lead to a conclusion that the Landlord's son does not genuinely intend to move into the rental unit for a period of at least a year.

RELIEF FROM EVICTION

13. The Tenant has been living in the rental unit since August 1, 2016. The Tenant receives a disability payment and has a part time job and makes less than \$20.00 / hour. There is no dispute the Tenant is not in arrears and the rent is manageable for the Tenant and her daughter. The Landlord's son currently lives with the Landlord. The Landlord did not provide any evidence for consideration on the stress he claims his son is under due to current living arrangement. The lack of details and particulars are such that I am not convinced the situation is stressful enough to grant the Landlord a standard order for eviction. While living in the basement unit of the Landlord's residence, may be an inconvenience I weighed the son's living situation against that of the Tenant in having to find a new place to live. Considering the Tenant's long tenure against the minor inconvenience to the Landlord's son, I find it not unreasonable to allow the Tenant time to find a new place to live and thereby grant a delay of eviction.
14. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would not be unfair to postpone the eviction until March 31, 2023 pursuant to subsection 83(1)(b) of the Act.
15. I have considered all of the evidence presented at the hearing and all of the oral testimony and although I may not have referred to each piece of evidence individually or referenced all of the testimony, I have considered it when making my determinations.
16. This order contains all reasons for the determinations and order made. No further reasons will be issued.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before March 31, 2023.
2. If the unit is not vacated on or before March 31, 2023, then starting April 1, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
3. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlord on or after April 1, 2023.
4. The Tenant shall pay to the Landlord \$5,496.79, which represents compensation for the use of the unit from May 1, 2022 to October 20, 2022, less the rent deposit and interest the Landlord owes on the rent deposit.

5. The Tenant shall also pay the Landlord compensation of \$31.77 per day for the use of the unit starting October 21, 2022 until the date the Tenant moves out of the unit.
6. The total amount the Tenant owes the Landlord is \$5,496.79.
7. If the Tenant does not pay the Landlord the full amount owing on or before March 31, 2023, the Tenant will start to owe interest. This will be simple interest calculated from April 1, 2023 at 5.00% annually on the balance outstanding.

February 8, 2023

Date Issued

Greg Brocanier

Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor,
Toronto ON M7A 2G6

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.

In accordance with section 81 of the Act, the part of this order relating to the eviction of the Tenant expires on October 1, 2023 if the order has not been filed on or before this date with the Court Enforcement Office (Sheriff) that has territorial jurisdiction where the rental unit is located.